

COMMONWEALTH OF VIRGINIA  
STATE CORPORATION COMMISSION  
AT RICHMOND, DECEMBER 28, 2005

HIGHLAND NEW WIND DEVELOPMENT, LLC

CASE NO. PUE-2005-00101

Application for a certificate to construct and operate  
a generating facility in Highland County

ORDER FOR NOTICE AND HEARING

On November 8, 2005, Highland New Wind Development, LLC ("Highland New Wind" or "Company"), filed with the State Corporation Commission ("Commission") its Application of Highland New Wind Development, LLC, For Approval to Construct, Own and Operate an Electric Generation Facility in Highland County, Virginia, pursuant to §§ 56-46.1 and 56-580 D of the Code of Virginia (hereinafter the Application); a cover letter with attached copies of the Highland County Board of Supervisors' resolution granting a conditional use permit for the project and a related staff report; and a cover letter enclosing confidential information filed under seal as provided by State Corporation Commission Rules of Practice and Procedure (hereinafter SCC Rules of Practice) 5 VAC 5-20-170, *Confidential information*. According to the Application, at 1-2, Highland New Wind proposes to construct and operate a wind-powered generating facility on Allegheny Mountain in western Highland County.

The generating facility would include up to 20 turbines with a nominal rating of 2.00 megawatts each. A new substation with transformers and other equipment would interconnect the facility to an existing 69 kilovolt line operated by The Potomac Edison Company d/b/a Allegheny Power. As stated in the Application, Highland New Wind filed pursuant to 20 VAC 5-302-25, *General information, electric generating facility information and documents to be included in the application for electric generating facilities equal to 50 MW or less*, of the Commission's Filing Requirements in Support of Applications for Authority to Construct and

Operate an Electric Generating Facility, 20 VAC 5-302-10 et seq. The Commission Staff reviewed the application and determined that the information required by 20 VAC 5-302-25 had been filed. (Memorandum of Completeness of November 15, 2005, filed in Case No. PUE-2005-00101.) The Company subsequently requested that the Commission schedule a public hearing. (*Letter of November 23, 2005, from John W. Flora, counsel to Highland New Wind, to Wayne N. Smith, State Corporation Commission, filed in Case No. PUE-2005-00101.*)

As required by § 62.1-44.15:5 D 2 of the Code of Virginia (hereinafter Code), the Commission and the State Water Control Board must consult on the wetland impacts of proposed electric generating facilities. Pursuant to Section 3 of the Department of Environmental Quality-State Corporation Commission Memorandum of Agreement Regarding Consultation on Wetland Impacts (July 2003) (hereinafter Wetland Impacts Memorandum), the Commission Staff informed the Department of Environmental Quality, acting for the State Water Control Board, that Highland New Wind had filed the Application and that consultation was required. (Letter of November 14, 2005, from Wayne N. Smith, State Corporation Commission, to Catherine M. Harold, Department of Environmental Quality, filed in Case No. PUE-2005-00101.) The Department of Environmental Quality has advised the Company that additional information on wetlands impacts is required. (Letter of November 17, 2005, from Catherine M. Harold, Department of Environmental Quality, to John W. Flora, counsel to Highland New Wind, filed in Case No. PUE-2005-00101.)

In addition to consultation on wetland impacts, §§ 10.1-1186.2:1 C and 56-46.1 G of the Code direct the Commission and the Department of Environmental Quality to coordinate the environmental review of proposed generating facilities. As required by Paragraph 3 of the Department of Environmental Quality-State Corporation Commission Memorandum of

Agreement Regarding Coordination of Reviews of the Environmental Impacts of Proposed Electric Generating Plants and Associated Facilities (August 14, 2002) (hereinafter Generating Plants Memorandum), the Commission Staff advised the Department of Environmental Quality that Highland New Wind had filed its application. (Letter of November 14, 2005, from Wayne N. Smith, State Corporation Commission, to Michael P. Murphy, Department of Environmental Quality, filed in Case No. PUE-2005-00101.) The Department of Environmental Quality subsequently informed the Commission Staff that additional information was required for the review required by Paragraphs 3 and 5 of the Generating Plants Memorandum. (Letter of November 30, 2005, from Ellie L. Irons, Department of Environmental Quality, to Wayne N. Smith, State Corporation Commission, filed in Case No. PUE-2005-00101.) Counsel to Highland New Wind was provided a copy of this letter.

The Commission finds that the Company's Application includes the information necessary to give the public notice of an application to construct generating facilities required by §§ 56-46.1 B and 56-580 D of the Code and that, with an exception addressed below, Highland New Wind's filings conform to the SCC Rules of Practice, 5 VAC 5-20-10 et seq. The Commission further finds that the Department of Environmental Quality has been advised of the need for a wetland impacts consultation and the need for environmental review of the proposed generating facility.

The Department of Environmental Quality has identified to the Company the additional information, which it requires for the wetland impacts consultation and the environmental review. Highland New Wind is responsible for providing the additional environmental information promptly. We cannot conclude this proceeding until that information has been

provided and considered by the agencies and until the agencies provide the Commission their findings and recommendations.

The Commission is mindful of the Company's interest in prompt consideration of the application, as it explained in the Application cover letter at 2-3. The Commission will prescribe by this Order procedures for a number of steps in our process for considering approval of a generation facility. We will require Highland New Wind to give notice to the public and to local officials. The Commission will provide for the filing of comments on the Application and for the filing of notices of participation as a respondent. A hearing to receive statements from public witnesses will be scheduled. We will also direct the Commission Staff to commence an investigation. Since the dates for completing the wetland impacts consultation and the environmental review are undetermined, dates for the filing of some prepared testimony and exhibits and for a hearing to complete the evidentiary record cannot be set. To expedite the hearing process, we will direct the Company to file testimony and exhibits in support of the Application. We will assign this case to a Hearing Examiner who will set additional procedural dates leading to a public hearing for presentation of the testimony and exhibits.

As noted, the Company claimed confidential treatment of certain materials. The Company did not, however, file expurgated or redacted copies for use and review by the public as required by SCC Rules of Practice 5 VAC 5-20-170. We will direct the Company to file promptly the required redacted or expurgated copies. The Company may also move for entry of a protective ruling.

On December 2, 2005, Ralph H. Swecker, Christopher T. Swecker, Pendleton Stokes Goodall, III, McChesney Goodall, III, William Stokes Goodall, Wayne Stokes Goodall, and Gregory Warnock, who identified themselves as "Highland Citizens," filed a notice of

participation as respondents pursuant to SCC Rules of Practice 5 VAC 5-20-80 B.<sup>1</sup> The Highland Citizens also filed on December 2, 2005, their Motion to Dismiss Application. The Company filed a response to the Motion on December 15, 2005. We find that the filing of responses as provided by SCC Rules of Practice 5 VAC 5-20-110, *Motions*, should be deferred so that any additional respondents, as well as the Company and the Commission Staff, may respond. The Hearing Examiner may then rule on the motion. The commencement of the notice process and the scheduling of other events should not be construed as denial of the Highland Citizens' motion. Rather, we commence the notice process and the scheduling of other events because the Company requested expeditious consideration of this case.

Accordingly, IT IS ORDERED THAT:

(1) As provided by §§ 56-46.1, 56-580 D, and related provisions of Title 56 of the Code, this matter be docketed as Case No. PUE-2005-00101 and that all associated papers be filed therein.

(2) Ralph H. Swecker, Christopher T. Swecker, Pendleton Stokes Goodall, III, McChesney Goodall, III, William Stokes Goodall, Wayne Stokes Goodall, and Gregory Warnock, who identified themselves as "Highland Citizens," be deemed respondents to the application as provided by SCC Rules of Practice 5 VAC 5-20-80 B.

(3) A public hearing to receive the testimony of public witnesses participating as provided by SCC Rules of Practice 5 VAC 5-20-80 C on the application be held on March 13, 2006, beginning at 1:30 p.m. and reconvening at 6:30 p.m. in Highland Elementary School Gymnasium, Myers-Moon Road, Monterey, Virginia. The hearing shall be continued on March 14, 2006, at 4:00 p.m. and reconvening at 7:00 p.m. at the same location.

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<sup>1</sup> The notice of participation properly filed with the Commission Clerk in accordance with the SCC Rules of Practice is considered timely filed.

(4) As provided by § 12.1-31 of the Code and SCC Rules of Practice 5 VAC 5-20-120, *Procedure before hearing examiners*, a Hearing Examiner be appointed. The Hearing Examiner shall conduct further proceedings, including, but not limited to, ruling on motions, scheduling the filing of testimony and exhibits, and scheduling further hearings, and shall file a final report.

(5) On or before January 12, 2006, the Company shall file with the Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118, an original and fifteen (15) copies of the redacted or expurgated copies of the confidential material filed in conjunction with its Application.

(6) On or before February 8, 2006, the Company shall file with the Commission Clerk an original and fifteen (15) copies of the prepared testimony and exhibits by which it expects to establish its case and serve a copy on all other parties. The Company shall comply with SCC Rules of Practice 5 VAC 5-20-140, *Filing and service*, 5 VAC 5-20-150, *Copies and format*, and 5 VAC 5-20-240, *Prepared testimony and exhibits*.

(7) The Commission Staff shall commence an investigation of the Company's application and shall file with the Commission Clerk, upon direction of the Hearing Examiner, the testimony and exhibits that it intends to present at any hearing.

(8) As provided by SCC Rules of Practice 5 VAC 5-20-80, written comments on the application may be filed by March 13, 2006, by either of the following methods:

A. Comments may be submitted in writing to Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118. Diskettes, compact disks, or any other form of electronic storage medium may not be filed with comments. All correspondence shall refer to Case No. PUE-2005-00101.

Or

B. Comments may be submitted electronically by following the instructions available at the Commission's website: <http://www.scc.virginia.gov/caseinfo.htm>.

(9) On or before February 10, 2006, any person or locality that expects to participate as a respondent in this proceeding shall file with the Commission Clerk at the address provided in Ordering Paragraph (5) an original and fifteen (15) copies of a notice of participation as a respondent as required by SCC Rules of Practice 5 VAC 5-20-80 B, Participation as a respondent. A copy shall simultaneously be served on counsel to the Company, John W. Flora, Esquire, Keeler Obenshain, PC, P.O. Box 1127, Harrisonburg, Virginia 22803. The notice of participation shall be filed and served as required by SCC Rules of Practice 5 VAC 5-20-140, *Filing and service*, and 5 VAC 5-20-150, *Copies and format*. Any organization, corporation, or government entity participating as a respondent must be represented by counsel as required by SCC Rules of Practice 5 VAC 5-20-30, *Counsel*.

(10) Upon receipt of a notice of participation as a respondent, the Company shall serve upon each respondent a copy of this Order; a copy of the Application, including all attachments; a copy of the cover letter with attached copies of the Highland County Board of Supervisors' resolution granting a conditional use permit and a related staff report; a copy of the cover letter with confidential information filed under seal; and a copy of the expurgated or redacted materials filed as directed by Ordering Paragraph (5); and a copy of the testimony and exhibits filed as directed by Ordering Paragraph (6), unless the material has been provided to the respondent.

(11) Upon receipt of this Order, the Company shall serve on Highland Citizens the materials listed in Ordering Paragraph (10), with the exception of prepared testimony and

exhibits, which the Company shall serve simultaneously upon filing with the Commission Clerk, as provided by Ordering Paragraph (6).

(12) As provided by SCC Rules of Practice 5 VAC 5-20-10, *Applicability*, SCC Rules of Practice 5 VAC 5-20-110, *Motions*, shall be modified as follows: (i) any response to the Highland Citizens' Motion to Dismiss Application of December 2, 2005, shall be filed with the Commission Clerk on or before March 3, 2006; (ii) any response to a motion for ruling on the validity of an objection filed as provided by SCC Rules of Practice 5 VAC 5-20-260, *Interrogatories to parties or requests for production of documents and things*, shall be filed within four (4) business days of service; (iii) if multiple parties respond to any motion filed in this proceeding, the movant may file one reply to all responses within ten (10) days of the filing of the last response in lieu of a reply to each response. SCC Rules of Practice 5 VAC 5-20-110, *Motions*, as well as all other provisions of the SCC Rules of Practice, shall otherwise apply.

(13) As provided by SCC Rules of Practice 5 VAC 5-20-10, *Applicability*, SCC Rules of Practice 5 VAC 5-20-140, *Filing and service*, be modified as follows: respondents must serve copies of any response to the Highland Citizens' Motion to Dismiss Application of December 2, 2005, on counsel to Highland Citizens, Anthony J. Gambardella, Jr., Esquire, Woods Rogers PLC, 823 East Main Street, Suite 1200, Richmond, Virginia 23219, and on counsel to Highland New Wind, identified in Ordering Paragraph (9). Respondents need not serve a copy of this response on any other party. Except as provided in this Ordering Paragraph (13), the parties and the Commission Staff shall serve copies of responses to all motions, replies to responses, and all other filings on all parties as provided by the SCC Rules of Practice.

(14) As provided by SCC Rules of Practice 5 VAC 5-20-10, *Applicability*, SCC Rules of Practice 5 VAC 5-20-140, *Filing and Service*, shall be supplemented for this proceeding as



follows: if the Commission authorizes the Commission Clerk to close the Clerk's Office for a portion of the day, such closing shall have the same force and effect as a legal holiday as set forth in § 1-210 B of the Code.

(15) On or before January 17, 2006, the Company shall provide for public inspection three (3) copies of its Application, including all attachments; three (3) copies of the cover letter with attached copies of a resolution granting a conditional use permit and a staff report; three (3) copies of the expurgated or redacted materials filed as directed by Ordering Paragraph (5); and, upon filing, three (3) copies of the testimony and exhibits filed as directed by Ordering Paragraph (6) to the Highland County Administrator's Office located at the Courthouse, intersection of Main and Spruce Streets, Monterey, Virginia.

(16) On or before January 11, 2006, the Company shall serve a copy of this Order on the chairman of the board of supervisors of Highland County. Service shall be made by first-class mail or delivery to the customary place of business of the person served.

(17) On or before January 20, 2006, the Company shall publish once the following notice as display advertising (not classified) in a newspaper of general circulation in Highland County:

NOTICE OF AN APPLICATION BY  
HIGHLAND NEW WIND DEVELOPMENT, LLC  
FOR APPROVAL OF A GENERATING FACILITY IN  
HIGHLAND COUNTY

STATE CORPORATION COMMISSION  
CASE NO. PUE-2005-00101

On November 8, 2005, Highland New Wind Development, LLC ("Highland New Wind"), filed with the State Corporation Commission ("Commission") its Application of Highland New Wind Development, LLC For Approval to Construct, Own and Operate an Electric Generation Facility in Highland County,

Virginia, pursuant to §§ 56-46.1 and 56-580 D of the Code of Virginia and related materials.

Highland New Wind proposes to construct and operate a wind-powered generating facility in western Highland County. The proposed location lies in the Blue Grass Magisterial District on Red Oak Knob and Tamarack Ridge of Allegheny Mountain and northwest of U.S. Route 250. The generating facility would include up to 20 turbines with a nominal rating of 2.00 megawatts each. A new substation with transformers and other equipment will interconnect the facility to an existing Allegheny Power Company 69 kilovolt line.

The Commission will conduct a public hearing on the application on March 13, 2006, beginning at 1:30 p.m. and reconvening at 6:30 p.m. in Highland Elementary School Gymnasium, Myers-Moon Road, Monterey, Virginia, to receive the testimony of public witnesses. The public hearing will continue at the same location on March 14, 2006, beginning at 4:00 p.m. and reconvening at 7:00 p.m.

Any person desiring to make a statement at the public hearing should appear at the hearing location fifteen (15) minutes before the starting time on the day of the hearing and contact the Commission's Bailiff.

Individuals with disabilities who require an accommodation to participate in the hearing should contact the Commission at least seven (7) days before the scheduled hearing dates at 1-800-552-7945 (voice) or 1-804-371-9206 (TDD).

Additional hearings to receive testimony and exhibits from the Commission Staff, Highland New Wind, and other parties will be held at the Commission's offices in Richmond. The date for additional hearings has not been set.

The application and related documents may be inspected in the Commission's Document Control Center, Office of the Clerk of the Commission, First Floor, Tyler Building, 1300 East Main Street, Richmond, Virginia, during Commission business hours. Copies of the application and related materials may be inspected beginning January 18, 2006, in the Highland County Administrator's Office located at the Courthouse, intersection of Main and Spruce Streets, Monterey, Virginia.

The application, unofficial copies of the Commission's Orders, and other documents related to the case may be viewed on the Commission's website, <http://www.scc.virginia.gov/caseinfo.htm>.

Comments on the application may be filed by March 13, 2006, by either of the following methods:

Comments may be submitted in writing to the Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118. Diskettes, compact disks, or any other form of electronic storage medium may not be filed with comments. All correspondence shall refer to Case No. PUE-2005-00101.

**OR**

Comments may be submitted electronically by following the instructions available at the Commission's website: <http://www.scc.virginia.gov/caseinfo.htm>. Electronic comments may not exceed 10 MB.

Interested persons, organizations, and government entities may participate in this proceeding as respondents as provided by the State Corporation Commission Rules of Practice and Procedure 5 VAC 5-20-10 *et seq.* An organization, corporation, or government entity participating as a respondent must be represented by counsel as required by State Corporation Commission Rules of Practice 5 VAC 5-20-30, *Counsel*. A notice of participation as a respondent must be filed with the Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118, by February 10, 2006, in conformity with State Corporation Commission Rules of Practice 5 VAC 5-20-80 B, Participation as a respondent, and the requirements set by the Commission Order for Notice and Hearing entered in this proceeding. Any person, organization, or government entity considering participation as a respondent should review the Commission Order for Notice and Hearing in this proceeding. The Commission Rules of Practice and Procedure, the unofficial version of the Commission's Order for Notice and Hearing, and other information may be viewed at <http://www.scc.virginia.gov/caseinfo.htm>. An official copy of the Commission's Order for Notice and Hearing may be obtained from the Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118.

(18) On or before February 17, 2006, respondent Highland Citizens shall serve a copy of its Motion to Dismiss Application of December 2, 2005, and a copy of this Order on each person, organization, or governmental entity that files by February 10, 2006, with the Commission Clerk a notice of participation as a respondent.

(19) On or before January 20, 2006, the Company shall file with the Commission Clerk a certificate of the mailing of notice prescribed by Ordering Paragraph (16). The certificate shall include the name and addresses of the officials served.

(20) On or before February 17, 2006, the Company shall file with the Commission Clerk proof of the newspaper publication directed by Ordering Paragraph (17).

(21) On or before February 8, 2006, respondent Highland Citizens shall file with the Commission Clerk a certificate of the service required by Ordering Paragraph (18). The certificate shall include the name and addresses of the person served.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to:  
John W. Flora, Esquire, Keeler Obenshain, PC, P.O. Box 1127, Harrisonburg, Virginia 22803;  
Richard D. Gary, Esquire, Hunton & Williams, LLP, Riverfront Plaza, East Tower, 951 East  
Byrd Street, Richmond, Virginia 23219-4074; and Anthony J. Gambardella, Jr., Esquire, Woods  
Rogers PLC, 823 East Main Street, Suite 1200, Richmond, Virginia 23219; and the  
Commission's Office of General Counsel and Divisions of Energy Regulation and Economics  
and Finance.